

Section 2

Authorized Discharges

COMMENT #1

S.2.A.1

Page 9, Lines 30-31

Clarify that municipalities are only responsible for discharges from their municipal separate storm sewer systems (MS4s) by deleting "into and" from S.2.A.1:

"All discharges ~~into and~~ from municipal separate stormwater sewer systems (MS4s) owned or operated by Permittees must be in compliance with this permit."

Basis for Comment:

- Federal Clean Water Act regulates discharges from the municipal separate storm sewer system (MS4), not into the system
- Environmental Protection Agency's (EPA) Stormwater Phase II Final Rule requires municipalities to "reduce the discharge of pollutants to the "maximum extent practicable" (MEP)" and, as generally understood and as defined in the final draft permit, "discharge" means "any discharge from a MS4 owned or operated by the permittee." [See **Attachment 'B'** - EPA 833-F-011 January 2000 Fact Sheet 2.9]
- Potentially transfers liability from the appropriately responsible party for stormwater discharges from private property into the public drainage system.

COMMENT #2

S.2.C

Page 10, Lines 12-14

Revise S.2.C from "This permit authorizes discharges from emergency fire fighting activities unless the discharges from fire fighting activities are identified as significant sources of pollutants to waters of the State." to:

"This permit authorizes discharges from fire fighting activities, including state mandated training and testing of fire protection systems, unless the discharges are identified as significant sources of pollutants to waters of the State.

Basis for comment:

- Delete adjective "emergency" because fire-fighting activities are by definition "emergencies."
- Add "state mandated training" because training to engage in fire-fighting activities is mandated by the State and is necessary to adequately fight fires and protect the life safety of the firefighters and improve the likelihood of the survival of those trapped by fires.

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- Add "testing of fire protection systems" because testing of fire protection systems (sprinkler systems) is required by the International Fire Code and properly functioning and tested fire protection systems are critical components of fire-fighting activities and the life safety of those trapped by the fire and/or fighting the fire.
- The federal Clean Water Act was never intended to regulate life safety activities.

Section 4

Compliance with Standards

COMMENT #3

S4.A

Page 11, Lines 5-7

Also Definitions and Acronyms

Page 44, Lines 3-4

Delete subsection S4.A because it would make stormwater programs (MS4s) inappropriately subject to a state law provision (RCW 90.48.520) intended to apply to wastewater treatment programs:

~~S4.A "In accordance with RCW 90.48.520, the discharge of toxicants to waters of the state of Washington which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria are prohibited."~~

Delete reference to RCW 90.48.520 from the definition of "All known, available and reasonable methods of prevention, control and treatment" in the permit's Definitions and Acronyms section:

"All known, available and reasonable methods of prevention, control and treatment" refers to the State Water Pollution Control Act, Chapter 90.48.010 ~~and 90.48.520.~~

Basis for comment:

- The proposed subsection S4A would make MS4s subject to RCW 90.48.520, which applies to discharge permits for "wastewater." The proposed subsection S4A applies to MS4 stormwater discharge permits. The federal water pollution control act (CWA) and the Washington State water pollution control act (WPCA) distinguish between wastewater and storm water. Although they are both regulated discharges, they are distinctly different and the statutes and regulations contemplate that they will be regulated differently. This regulatory distinction reflects the real-world differences between sanitary sewer systems and storm sewer systems.
- See **Attachment 'C,' Draft King County Comments on S4A.**

Section 5

Stormwater Management Program

COMMENT #4

S5A3.a

Page 12, Lines 18-20

Delete text from S5A3.as noted: “Each Permittee shall track the ~~cost of development and~~ implementation of the SWMP. This information shall be included in the Annual Report required by this Permit.”

Basis for comment:

- See comments under Appendix 3 Annual Report re tracking costs.

COMMENT #5

S5B

Page 12, Line 29

Defining MEP & AKART BMPs

Insert the underlined text after the first sentence in S5B:

“The Stormwater Water Management Program (SWMP) shall be designed to reduce the discharge of pollutants from regulated small MS4s to the MEP, meet state AKART requirements, and protect water quality.” Compliance with the permit and implementation of the SWMP is deemed to be compliance with this MEP requirement, state AKART requirement and requirement to protect water quality.

Basis for comment:

The draft permit needs to be modified to make clear that the Best Management Practices required by the permit meet the compliance standard of “maximum extent practicable (MEP).” It is also necessary to clarify that the federal “MEP” compliance standard equals the State AKART standard.

General Condition G20 Non-Compliance Notification [standard language from Publicly Owned Treatment Works (wastewater treatment facilities) NPDES permits requiring compliance with technological effluent limitations] is a good reason to clarify the permit compliance standard.

S5C.1

Public Education and Outreach

COMMENT #6

S5C1a

Page 13, Lines 11-13

Delete the following crossed out text from S5C1a:

“No later than two years after the effective date of this Permit, the Permittee shall implement or participate in an education and outreach program targeting a minimum of two of the audiences listed in i. – viii below. The outreach program shall be designed to achieve measurable improvements in each target audience’s understanding of the

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~~problem and what they can do to solve it-and measurable improvements in the percentage of each target audience regularly carrying out the intended action or behavior change. The education and outreach program shall increase regular adoption of the behaviors in the chosen target audiences by four years after the effective date of this Permit.”~~

Basis for comment:

Municipal programs can not control or force people to adopt certain behaviors through an education and outreach program. We can measure improvements in their understanding of the problem and what they can do to solve it and influence them to adopt the behavior.

S5C.2 **Public Involvement and Participation**

No comments.

S5C.3 **Illicit Discharge Detection and Elimination**

COMMENT #7 **S5C3(b)ii.** **Second bullet** **Page 16, Lines 22-24**

Delete the requirement for municipalities to adopt an ordinance that prohibits discharges from lawn watering, and other irrigation runoff per the second bullet under S5C3(b)ii.

Basis for comment:

The inclusion of residential lawn watering and landscape irrigation flows in this section stretches the credulity of the permit. If the concern is pollutants in these discharges, other permit sections address the concern through public education and outreach requirements. If Ecology’s concern is simply flow, we maintain that there is no clear evidence that such discharges cause flow problems, as most of these flows occur in dry weather and may actually help with summertime base flow of urban streams..

COMMENT #8 **S5C3c** **Page 19, line 8 through Page 18, Line 19**

Revise S5C3cii to include the underlined text:

A specific field assessment activities program to detect and address non-stormwater releases as described in remainder of this subsection (S5C3cii) or the Permittee may use a combination of programs and/or field assessment activities to detect and address non-stormwater releases into the MS4 including use of those screening activities outlined in the second bullet of ii and submit a description of this illicit discharge detection and elimination program as part of their third annual report. Field assessment activities, including visual inspection of priority outfalls

identified in i., above, during dry weather and for the purposes of verifying outfall locations, identifying previously unknown outfalls, and detecting illicit discharges.

- Receiving waters shall be prioritized for visual inspection no later than three years from the effective date of this Permit, with field assessments of three high priority water bodies made no later than four years from the effective date of this Permit. Field assessments on at least one high priority water body shall be made each year thereafter.
- Screening for illicit connections shall be conducted using: *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, or other comparable methodology.

Basis for comment:

This subsection requires Phase II municipalities to develop and implement an 'ongoing program to detect and address non-stormwater discharges, spills, illicit connections and illegal dumping into the Permittee's MS4.' It then specifies a "one-size-fits-all" field assessment activities approach to achieve this goal of detecting and addressing non-stormwater releases into the MS4 rather than providing flexibility to develop or use existing program/approach or combination of programs to achieve this goal. Revising subsection S5C3cii as noted provides this flexibility while achieving the program goal.

S5C.4 Controlling Runoff from New Development, Redevelopment and Construction Sites

COMMENT #9

5C4 and other Permit sections referencing 2005 Ecology Stormwater Manual or Manual Chapters

Appendix 1 Minimum Technical Requirements for New Development and Redevelopment

Remove all references in the permit and Appendix 1 to sections or chapters of the 2005 Ecology Stormwater Manual other than the Manual's minimum requirements, thresholds, definitions, adjustment and variance criteria.

Basis for comment:

- Including references to other sections or chapters of the 2005 Ecology Stormwater Manual in Appendix I and the permit language is a defacto Manual requirement that goes well beyond minimum technical requirements of the Clean Water Act. This inclusion by reference avoids the rule making process Ecology needs to follow if the Manual is to be anything other than guidance.

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- See the Ecology Stormwater Manual policy statement that the Manual (other than minimum requirements, thresholds, definitions, adjustments and variances) is guidance; not a regulatory requirement (**Attachment 'D'**)
- References to the Western Washington Stormwater Manual must include language that references only the mandatory sections of the manual, and not the recommended sections or appendices. Permittees are not required to adopt the whole manual by reference alone. Appendix I continues to refer back to sections of the Manual that are not in the appendices. Ecology needs to ensure that all parts referenced in the Appendix text are contained within the document.
- Phase II permittees should have the same general permit option of developing and submitting an equivalent manual modified for local conditions as the Phase I permittees and as originally allowed for Phase II municipalities under the Puget Sound Action Team's Comprehensive Stormwater Management Program conditions.

COMMENT #10 **See Attachment 'E' for additional comments on Appendix 1**

COMMENT #11 **S5C4a.iv** **Page 20, Lines 13-16**

Revise the proposed Low Impact Development (LID) provision by adding the underlined text:

“Provisions to allow non-structural preventive actions and source reduction approaches such as Low Impact Development Techniques (LID) where site conditions allow and long term performance and maintenance can be assured, measures to minimize the creation of impervious surfaces and measures to minimize the disturbance of soils and vegetation.”

Basis for comment

Many Low Impact Development Techniques are infiltration-based systems and require certain site conditions to function properly. In addition, long term performance and maintenance of these often site and/or integrated techniques (i.e., green roofs) require agreements recorded on the property title to assure long term performance and maintenance.

COMMENT #12 **S5C4** **Page 19, Lines 15-23**

Revise S5C4 to be crystal clear as to what "site" and "project" mean and then use consistently throughout this section. It is confusing as to whether the "site" or the "project" is the entire property or just the disturbed area. Similar comment for definition and use of these words in Appendix 1 (see Attachment 'E').

S5C.5 Pollution Prevention and Operation and Maintenance for Municipal Operations

COMMENT #13

S5C5(a)

Page 23, Lines 14 - 18

Change the last sentence of S5C5(a) from ““These standards are violated when an inspection identifies a required maintenance action related to facility function, and that action is not performed within 6 months for typical maintenance , within 9 months for revegetation, and within 2 years for maintenance that requires capital construction of less than \$25,000.” to read as follows:

"These standards are violated when an inspection identifies a required maintenance action related to facility function, and that action is not performed within 12 months for typical maintenance, within 2 years for maintenance that requires capital construction of less than \$25,000. In the event that municipalities are unable to meet these maintenance action timelines for some facilities because of additional regulatory permit or contracting processes, weather conditions, access issues beyond the permittees control or because a significant percentage of facilities require these maintenance actions at one time, then permittees can develop a phased maintenance schedule for completing these maintenance actions.

Basis for comment:

In many cases, the (revised) maintenance timelines can be met. However, maintenance work can become backlogged during the dry season due to peak demands for maintenance and construction crews. There are times when maintenance work must wait for favorable weather conditions or until the Hydraulic Project Approval "fish window" before it can be completed. Further, maintenance actions necessary any one year can be significantly increased or impacted from significant storm events, snow (removal of sand from system), system failures/emergencies, access issues, regulatory requirements, and, at times, contract requirements. The proposed revisions recognize this reality while still requiring municipalities to schedule and complete maintenance of facilities for which they are unable to meet the maintenance timelines.

COMMENT #14

S5C5(d)

Page 23, Lines 35 - 39

Bellevue recommends revising S5C5(d) with the addition of the underlined language and deletion of the crossed out language:

“Inspection of all catch basins and inlets owned or operated with by the Permittee at least once before the end of the Permit term or inspections can be conducted on a “circuit basis” whereby a sampling of catch basins and inlets within each circuit is inspected to identify maintenance

needs. Include in the sampling an inspection of the catch basin immediately upstream of any system outfall to a water of the State. Clean catch basins if the inspection indicates cleaning or clean all catch basins within a given circuit at one time if the inspection sampling indicates cleaning is needed to comply with maintenance standards established in the adopted maintenance standards required in S5C5a. 2005 Stormwater Management Manual for Western Washington. Decant water shall be disposed of in accordance with Appendix 5 Street Waste Disposal.”

Additionally, Bellevue suggests adding language that recommends prioritizing "circuit basis" approach inspections (or catch basin inspections) based on criteria to maximize pollutant removal and protect water quality of receiving waters; such as, for example, inspecting circuits discharging to outfalls in descending priority as follows:

1. Circuits that have no water quality treatment or flow control facilities prior to discharge to receiving waters.
2. Circuits that discharge to TMDL listed waters.
3. Circuits that discharge to 303(d) listed waterbodies.
4. Circuits that discharge to closed depressions or ponds that provide secondary treatment before final discharge to receiving waters.

We'd also like the flexibility to specify inspection frequencies for catch basins based on providing sufficient data to justify the inspection frequency.

Basis for Comment:

As noted in the accompanying letter, Phase II permittees must have the flexibility to develop an individualized storm water program that addresses the particular characteristics and needs of its system per the EPA 883-F-011 January 2000 Fact Sheet 2.9. The catch basin inspection program proposed in final draft permit condition S5C5(d) is based solely on the number of catch basins inspected over a period of time and doesn't provide the foundation for developing a outcome based program for the particular characteristics and needs of the MS4. The proposed revised condition language to include "circuit basis inspections" is a start at developing a variable inspection frequency program based on the particular characteristics and needs of the MS4 and maximizing pollutant removal of the catch basin inspection program. An example of this would be identifying and inspecting catch basins in sections of the MS4 where there is no downstream detention or treatment system before the stormwater is discharged to a receiving water more frequently than those sections where there are intervening detention or treatment systems.

S7

Total Maximum Daily Loads (TMDLs)

COMMENT #15

S7

Page 32, starting on line 22

Delete references to TMDLs as the trigger mechanism and replace with 'publication of the Detailed Implementation Plan for the TMDL' as the trigger mechanism for identifying required TMDL implementation strategies in Section 7.

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Basis for comment:

In Washington State, the mechanisms for implementing TMDLs are contained in Detailed Implementation Plans (DIPs) that usually follow TMDLs by at least a year. These DIPs are not, under the Clean Water Act, a required part of TMDLs. They exist as a consequence of the settlement of the TMDL lawsuit brought by environmental groups in the late 1990's. Because in Washington, the implementation strategy for TMDLs is disclosed in DIPs, which are separate from, though related to TMDLs, the publication of the DIP should be the trigger for TMDL-related compliance activities, not the approval of the TMDL itself. The permit must be clear on this or permittees are likely to find themselves in court for failure to implement a TMDL that does not specify what actions the permittee is supposed to take.

S8

Monitoring

COMMENT #16 S8 P. 33, starting on Line 10 through P. 36, ending on Line 15

Bellevue requests that Ecology form a Stormwater Partnership with Phase I and Phase II jurisdictions, environmental groups, other interested stakeholders and Ecology staff from the Water Quality (NPDES) Program, Environmental Assessment Program, and a policy level staff person that spans internal program divisions. This on-going partnership will be responsible for:

- Coordinating with the State on a stormwater baseline and trend assessment monitoring strategy at a watershed level that would link and coordinate with salmon recovery and Puget Sound Initiative programs.
- Developing and replacing existing monitoring language in Phase I and II permits with language that reflects a monitoring program that would provide:
 - Meaningful management information for improving BMP selection and making other stormwater management decisions
 - Reliable indicators that SWMP actions were making reasonable progress towards desired outcomes
 - Coordination and analysis of information across jurisdictions and agencies through the partnership to reduce redundancies, realize efficiencies, and improve transparency

Bellevue requests Ecology to convene the Partnership as soon as possible to allow timely issuance of the NPDES Municipal stormwater permits. Bellevue offers to assist in convening this partnership.

Appendix 3

Annual Report Forms for Permittee

COMMENT #17

Appendix 3

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Delete all references and requirements for tracking Permittee's costs/expenditures associated with permit compliance in Appendix 3, including Part II Expenditure Report Form 1.2 and Form 1.2 Expenditure Form for Western WA Phase II Cities, Towns and Counties.

Basis for comment:

- The Environmental Protection Agency does not require Phase II permittees to track program costs/expenditures associated with permit compliance in the federal Stormwater Phase II Final Rule reporting requirements.
- If Ecology wants estimated program cost/expenditure data to (as stated in the Appendix) "to make determinations of practicability, compare effectiveness of programs and gauge budget and assistance needs," this would be better achieved through a survey of Phase II permittees rather than through a requirement in a federal permit.
- On a side note, a survey would also allow Ecology to better define the questions that the cost data can inform. Municipalities are very dubious that cost data can be used to "compare effectiveness of programs;" that would be (and is) better done by comparing compliance documentation data and measurable program outcomes.
- No two jurisdictions budget activities in the same way. Comparing costs will not assure performance or even relative levels of activity among permittees.